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EXAMINER LASHLEY, LAUREL L	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/001,446
Filing Date: October 31, 2001
Appellant(s): TARQUINI ET AL.

MAILED

SEP 27 2006

Technology Center 2100

Jody C. Bishop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/11/2006 appealing from the Office action mailed 03/24/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claim 6 appears on page 11 of the Appendix to the appellant's brief. The minor error is the recitation of "protocolumn" rather than --protocol--.

Art Unit: 2132

(8) Evidence Relied Upon

5,905,859

Holloway et al.

05-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 –10 are rejected under 35 U.S.C. 102(b) as being anticipated by Holloway, et al. in US Patent 5,905,859 (hereinafter US '859).

As it pertains to Claim 1, US '859 teaches:

A network having an intrusion protection system (*see column 2, lines 54 – 55*), comprising:

a network medium (*see column 17, lines 66 – 67*);

a management node connected to the network medium and running an intrusion prevention system management application (*see column 18, lines 32 – 33; where the network management station is the management node and it is inherent that a detection means application is running*); and

a plurality of nodes connected to the network medium and running an instance of an intrusion protection system application (*see Figure 16; where each managed hub signifies a node*), at least one of the nodes having an identification assigned thereto based on a logical assignment grouping one or more of the plurality of nodes, each node sharing an identification being commonly vulnerable to at least one network exploit (*see column 3, lines 4 – 5; where the MAC address is the ID and each node has an authorized address*).

For Claim 2, US '859 teaches:

The network according to claim 1, wherein the management node is operable to originate a security update that is transmitted to each node sharing the identification, any remaining nodes not sharing the identification being excluded from receiving the update (*see column 8, lines 8 – 10; where each nodes copies the group address*).

For Claim 3, US '859 teaches:

The network according to claim 1, wherein a plurality of identifications are respectively assigned to one or more of the plurality of nodes (*see Figure 16; where each hub is in a differing location that can be used as a form of identification (e.g. building, department, floor)*).

For Claim 4, US '859 teaches:

The network according to claim 1, wherein the identification is an Internet Protocol multicast group identification (*see column 2, line 61; where the ID is a multicast/group address also referred to as the LAN security feature group address*).

For Claim 5, US '859 teaches:

The network according to claim 2, further comprising:

a plurality of network mediums (*see column 17, lines 66 – 67*); and

at least one router (*see Figure 16*), the management node and the plurality of nodes each respectively connected to one of the plurality of network mediums in the network, the router disposed intermediate the plurality of network mediums and operable to forward the security update from the network medium having the management node connected thereto to any nodes connected to the remaining network mediums and sharing the identification (*see column 15, lines 34 – 38*).

For Claim 6, US '859 teaches:

Art Unit: 2132

The network according to claim 5, wherein the router determines whether any of the plurality of nodes connected to the remaining network mediums share the identification through implementation of the Internet group management protocol (*see column 15, lines 30 – 32*).

For Claim 7, US '859 teaches:

The network according to claim 1, wherein the network medium is an Ethernet (*see column 15, lines 50 – 51*).

For Claim 8, US '859 teaches:

The network according to claim 1, further comprising a network-based intrusion protection system appliance dedicated to filtering inbound and outbound data frames transmitted across the network medium (*see column 18, lines 10 – 13; where the discovery request/response frames act as inbound and outbound frames*).

For Claim 9, US '859 teaches:

The network according to claim 8, wherein the network-based intrusion protection system appliance interfaces with the network medium via a network interface card operating in promiscuous mode (*see Figure 3 and column 5, line 16*).

For Claim 10, US '859 teaches:

The network according to claim 8, wherein the network-based intrusion protection system appliance shares the identification (*see column 18, lines 1 – 4; where a list is maintained*).

(10) Response to Argument

A. Independent Claims 1 and Dependent Claims 2 – 7

In the present case, the Appellant argues that the Examiner has not demonstrated how "a management node...running an intrusion prevention system management application" necessarily flows from Holloway's teachings and merely monitoring the progress of a detected

Art Unit: 2132

frame does not require or imply the running of an intrusion prevention system management application.

With respect to this argument, the Examiner believes that the recitation of an apparatus and method for the detection and prevention of security intrusion in a computer network of Holloway is equivalent to Appellant's use of an "intrusion prevention system" (see Abstract; column 2, lines 49 – 58; column 3, lines 41-51). In an instance where a monitoring and detection means are present, it is inherent that a form of an intrusion prevention system is running so that the invention of Holloway can realize its functionality. The claim broadly recites the intrusion prevention system with no further limitations; therefore absent any particulars of the intrusion prevention system the Examiner has interpreted the claim in view of the broadest reasonable interpretation. As such, the recitation in Holloway of "preventing" satisfies the condition of the claim limitation.

Appellant also asserts that Holloway's managed hubs themselves are not grouped together according to a common vulnerability to a network exploit, as recited in claim 1. In response to this assertion, the Examiner believes the LAN security feature group address is the vulnerability by which the nodes are grouped. Furthermore, responses received from the managed hubs and maintaining a list of interconnected devices that support the LAN security feature signify that devices are in communication and are aware of other authorized/valid nodes meeting the limitation of the claim (see column 3, lines 25 - 32 column 5, lines 17 – 22; column 7, lines 33 – 48). Appellant is essentially arguing that the references fail to show limitations not present in the rejected claim.

Accordingly, for reasons discussed above, the Examiner maintains that Holloway teaches the elements of claim 1. Dependent claims 2 – 7 depend directly or indirectly from claim

Art Unit: 2132

1, thus inheriting all of the limitations of that independent claim. Consequently, the Examiner maintains the rejection of claims 2 – 7.

B. Dependent Claim 8 and Claim 10

With regard to Appellant's arguments that there is no indication that Holloway's network management station is an intrusion protection appliance, the Examiner notes that Holloway's Figure 3 illustrates Appellant's claim limitation of an "... intrusion protection system appliance that interfaces with the network medium via a network interface card..." (see Figure 3 and column 5, lines 10 – 16).

C. Dependent Claim 9

Appellant asserts that Holloway does not teach an intrusion protection system appliance, much less an intrusion protection system appliance that interfaces with the network medium via a network interface card operating in promiscuous mode. The Examiner maintains that Holloway's Figure 3 illustrates Appellant's claim limitation of an "... intrusion protection system appliance that interfaces with the network medium via a network interface card..." (see Figure 3 and column 5, lines 10 – 16).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Art Unit: 2132

Laurel Lashley
Examiner
Art Unit 2132

LLL
20 September 2006

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